PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

The opinion of the Circuit Court of Appeals for the Third Circuit is reported in 120 F. 2d. at page 476. (See pp. 92-98 of the record.) The opinion of the United States District Court for the Eastern District of Pennsylvania is reported in 35 Federal Supplement at page 291 (see pp. 3-12 of the record).

Jurisdiction.

The grounds on which the jurisdiction of the Supreme Court of the United States is invoked are set forth beginning at page 9 herein, in the petition for writ of certiorari.

Statement of the Case.

The facts are as set forth, beginning at page 2 herein, in the petition for writ of certiorari.

Specification of Errors.

1. The Circuit Court of Appeals for the Third Circuit erred in finding and holding that the income of a trust, which is held or accumulated for future distribution to a person or persons whose identity cannot be determined until the happening of unpredictable events, but who may or may not be the grantor, is held or accumulated for future distribution to the grantor.

2. The Circuit Court of Appeals for the Third Circuit erred in finding and holding that the income from the three trusts here involved was held or accumulated for future distribution to the grantor.

3. The Circuit Court of Appeals erred in reversing the decision of the District Court of the United States for the Eastern District of Pennsylvania.

4. The Circuit Court of Appeals for the Third Circuit erred in entering judgment for the respondent.

SUMMARY OF THE ARGUMENT.

Sections 161 (b)[8] of the Revenue Acts of 1932[9] and 1934[10] provide that the tax upon the income of a trust shall be paid by the fiduciary except such part of the income as is held or accumulated for future distribution to the grantor, within the meaning of Section 167[11] of said statutes. Therefore, unless the income of the trusts here involved was held or accumulated for future distribution to the grantor (the petitioner), the tax thereon is to be paid by the respective trustees and not by the petitioner.

The income of the trusts was not held or accumulated for future distribution to the grantor. Section 167[11] of the Revenue Acts of 1932 and 1934, being an exception to a general rule, is to be strictly construed, and since the section is a part of a fiscal statute, any doubts are to be resolved in favor of the taxpayer. The income of the trusts was held or accumulated for future distribution to a person or persons whose identity could not be determined until the hap-

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[8] 47 Statutes at Large, Public Volume I, p. 219; 48 Statutes at Large, Public Volume I, p. 727, U. S. C. (1934 ed.) p. 1058.

[9] 47 Statutes at Large, Public Volume I, p. 169.

[10] 48 Statutes at Large, Public Volume I, p. 680; U. S. C. (1934 ed.) p. 1035.

[11] 47 Statutes at Large, Public Volume I, p. 221; 48 Statutes at Large, Public Volume I, p. 729, U. S. C. (1934 ed.) p. 1059.

pening of unpredictable events, and hence could not have been held or accumulated for future distribution to the grantor.

It follows that the income of the trusts was taxable to the trustees and not to the petitioner.

ARGUMENT.

I.

The tax upon the income of the trusts is to be paid by the respective trustees unless the said income was held or accumulated for future distribution to the grantor (the petitioner).

Sections 161(b)[12] of the Revenue Acts of 1932[13] and 1934[14] provide:

> Computation and payment. . . . The tax[15] shall be computed upon the net income of the . . . trust and shall be paid by the fiduciary, except as provided in . . . section 167 (relating to income for benefit of grantor). . . .[16]

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[12] *Supra*, footnote 8, page 14.

[13] *Supra*, footnote 9, page 14.

[14] *Supra*, footnote 10, page 14.

[15] The income tax. Section 161 is a part of Supplement E (47 Statutes at Large, Public Volume I, p. 219; 48 Statutes at Large, Public Volume I, p. 727, U. S. C. (1934 ed.) p. 1058) entitled "Estates and Trusts" of Subtitle C (47 Statutes at Large, Public Volume I, p. 191; 48 Statutes at Large, Public Volume I, p. 700, U. S. C. (1934 ed.) p. 1046) of Title I, (47 Statutes at Large, Public Volume I, p. 169; 48 Statutes at Large, Public Volume I, p. 680, U. S. C. (1934 ed.) p. 1035) entitled "The Income Tax".

[16] The section is quoted in full in the Appendix to this brief beginning at page 31.

Since the income here involved is the income of trusts, the income tax thereon should be computed upon the net income of the trusts and paid by the respective trustees except as provided in Section 167.[17]

Section 167, in so far as pertinent [18] provides:

> (a) Where any part of the income of a trust—(1) is . . . held or accumulated for future distribution to the grantor . . . then such part of the income of the trust shall be included in computing the net income of the grantor.

In the instant case the income was held or accumulated for future distribution to someone. If that "someone" was the grantor, then the income should be included in computing the net income of the grantor. On the other hand, if that "someone" was not the grantor, the tax, pursuant to Section 161(b), should be computed upon the net income of the trust and should be paid by the respective trustees.

II.

The income of the trusts was not held or accumulated for future distribution to the grantor.

A. Section 167 is an exception to a general rule and as such is to be strictly construed.

As we have previously stated, the general rule, enunciated by Section 161(b), is that the tax on the income of a

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[17] *Supra*, footnote 11, page 14.

[18] The section is quoted in full in the Appendix to this brief beginning at page 31.

trust is to be paid by the trustee. Section 167 is, in the language of the Congress, an exception to that rule.

> ". . . *except* as provided in . . . Section 167 . . ." (Section 161(b))

> "Exceptions contained in statutes are to be construed strictly." (*Great Atlantic & Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. (2d) 667.)

> "Unlike that of the proviso, however, it is apparent that the position of the exception in the statute, is unimportant. But the exception is also subject to the rule of strict construction; that is, any doubt will be resolved in favor of the general provision and against the exception, . . ." (*Crawford Statutory Construction*, Sec. 229, p. 610).

> ". . . we are led to the general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exception, must establish it as being within the words as well as within the reason thereof." (*United States* v. *Dickson* (15 Pet. (40 U. S.) 141, 165).)

Consequently, if there is any doubt as to whether the accumulated income of the trusts was to be distributed to the grantor, that doubt will be resolved in favor of the general provision,—i. e., the provision that the income is taxable to the respective trustees.

B. Section 167 is a part of a fiscal statute, and consequently, if there is any doubt as to its meaning, such doubt is to be resolved in favor of the taxpayer.

> "On behalf of the government it is urged that taxation is a practical matter, and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. *Gould* v. *Gould,* 245 U. S. 151, 153, 62 L. ed. 211, 213, 38 Sup. Ct. Rep. 53. The rule is stated by Lord Cairns in *Partington* v. *Atty. Gen.* L. R. 4 H. L. 100, 122.
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> 'I am not at all sure that in a case of this kind—a fiscal case—form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.' And see *Eidman* v. *Martinez,* 184 U. S. 578, 583, 46 L. ed. 697, 701, 22 Sup. Ct. Rep. 515." (*United States* v. *Frederick L. Merriam,* 263 U. S. 179, 187.)

C. The income of the trusts was held or accumulated for future distribution to a person or to persons whose identity could not be determined until the happening of unpredictable events.

Respondent does not and cannot deny that on December 31st of each of the years 1932, 1933 and 1934, the trustees did not and could not know for whom they held the accumulated income with respect to which the petitioner is being taxed. For example the income received during the first half of 1934 by the trustees of the Elizabeth Kent Van Alen Trust and held on December 31, 1934, was distributable to petitioner's wife, if petitioner died prior to June 30, 1936, if she survived him and was not divorced from him. It was distributable to Elizabeth, if petitioner died prior to June 30, 1936 and if petitioner's wife did not survive him or was divorced from him. It was distributable to Elizabeth's issue and husband or to her issue alone, if she left no husband, if the petitioner died prior to June 30, 1936, if petitioner's wife predeceased him or was divorced from him, and if Elizabeth predeceased him. It was distributable to the beneficiaries of the General Family Trust (p. 58; Joint Exhibit 4) (including Virginia Tucker Kent, A. Atwater Kent, Jr., and their issue, a possible second wife of petitioner and possible children by a second marriage of petitioner, and The Atwater Kent Foundation, a charity), if petitioner died prior to June 30, 1936, if petitioner's wife predeceased him or was divorced from him, and if Elizabeth predeceased him, survived by neither husband nor issue. The income was not in its entirety distributable to the petitioner even if he lived until June 30, 1936; a part of it was

to be paid (and in fact a part of it was paid[19]) to Elizabeth to make up a deficiency in the payments made to her from 1935 income. *The income was in its entirety distributable to the petitioner only if it was not diminished by expenses; if the petitioner lived until June 30, 1936; if during 1935 $20,000. was paid to Elizabeth from the income of that year, if Elizabeth was alive during any part of the year 1935; or if Elizabeth died prior to December 31, 1935, if $10,000. of the 1935 income was during 1935 paid to or for the benefit of each child who survived her.*[20]

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[19] The decision of the Circuit Court of Appeals taxes to the petitioner income over which he has no control, income which he has not received and never can receive. For example, of the 1934 accumulations in the Elizabeth Kent Van Alen trust amounting to $41,600., petitioner in 1936 received only $29,800. Of the difference ($11,800.), $10,000. was payable to, and was paid to, Elizabeth pursuant to the terms of the trust. Thus, petitioner is being taxed upon income to which another had an unqualified right.

[20] *The decision of the Circuit Court of Appeals will result in the petitioner paying more in income taxes than he will, if he lives, receive from the trust, unless the net income of each trust annually exceeds $66,666.66.* For example, assume that the net income of the Elizabeth Kent Van Alen Trust is $65,000. for the current year, 1941. One-half of that amount or $32,500. will be paid to Elizabeth, leaving $32,500. to be accumulated, upon which petitioner will pay, under the circuit court's decision, a tax in 1942 of not less than seventy per cent. or $22,750. Assume that in 1942, the income of the trust is again $65,000. One-half thereof or $32,500. will be paid to Elizabeth. On June 30 and December 31, 1943, however, the trustees will be required to pay Elizabeth a total of $10,000. because the said $32,500. was less than the $55,000. she was supposed to receive in 1942. The deduction of this $10,000. will leave only $22,500. to be paid to petitioner on June 30 and December 31, 1943, if he be then living, although he will have paid $22,750. in income taxes in 1942 on account of the 1941 accumulated income.

(Footnote continued on page 21)

The question is whether income can be said to be held "for future distribution to the grantor" when no one knows to whom the accumulated income will be distributed. The statute is unequivocal in its wording. It uses the word "is". The respondent's contention, in effect, is that the word "is" means "is probably" or "may be" or perhaps even "is possibly". In common usage the word "is" is never used as synonymous with any of the last three expressions above quoted.

In using words of common usage in the Revenue Acts, the Congress means to employ the ordinary meaning of the terms used. *Woolford Realty Co.* v. *Rose*, 286 U. S. 319, 327 (1932); *Old Colony Railroad Co.* v. *Commissioner*, 284 U. S. 552, 560 (1932); *Lynch* v. *Alworth-Stephens Co.*, 267 U. S. 364, 370 (1925). This Court refuses to assume that the Congress uses terms in the Revenue Act "with reference to 'some esoteric concept derived from subtle and theoretic analysis'" and "cannot sacrifice the 'plain, obvious and rational meaning' of the statute even for 'the exigency of a hard case'." *Deputy* v. *duPont*, 308 U. S. 488, 498 (1940).

It is perfectly clear in the instant case that the income in question was accumulated in trust for future distribution to a person or to persons whose identity could not be determined. The fiduciary had to determine its tax liability as to the 1932 accumulations by a consideration of the facts as they existed at the end of 1932. Similarly, it had to determine its tax liability with respect to the 1933 and 1934 accumulations at the end of each of those years. At

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(Footnote continued from page 20)

Unless the annual income of each trust exceeds $66,666.66, the petitioner will derive no economic benefit whatever from said income.

In only one of the four years, the facts with respect to which are before this Court, did the income of any of the trusts exceed $66,666.66.

the end of each year, it was impossible for the fiduciary to say for whom it was holding the accumulations. The person or persons to whom these accumulations would eventually be paid could not be determined. It is clear, as a factual matter, that the fiduciary would have had to possess clairvoyant powers if it attempted to determine at the end of any particular year for whom it held the accumulations.

The decided cases support the proposition that the income was accumulated for a person or persons whose identity could not be determined. Some of the cases use the term "unascertained persons" and others "persons with contingent interests", but as Judge KIRKPATRICK remarked, "It is by no means easy to draw a line between the two."

In *Commissioner* v. *Dean*, 102 F. (2d) 699 (C. C. A. 10th, 1939), it was held that where income could not be paid to a beneficiary unless he lived *three days* after the close of the taxable year the fiduciary could not assume that he would live for three days thereafter and that the income was held for unascertained persons at the end of the year and hence was taxable to the fiduciary. The court said:

> "Plainly, respondent did not have a present vested right to the money at the end of the calendar year. He had only a prospective contingent right which could not ripen into a present vested right before the close of the administrative year. Although only three days intervened between the dates on which the respective years ended, the income was not currently distributable at the close of the calendar year. It was held at that time for the benefit of unascertained persons or persons with contingent interests; *it was held for persons whose identity could not be ascertained until the end of the administrative year.*" (Italics added.)

In the *Dean* case the issue was whether the income was taxable to the fiduciary or to the beneficiary. The government would have collected a larger tax if the income had been held to be taxable to the beneficiary. The court had to decide whether it could say that the income in that case was to be distributed currently to the beneficiary or was accumulated in trust for the benefit of persons whose identity could not be determined. The issue was whether it could be said on December 31st of any year that the income was to be distributed currently to this particular beneficiary. The court held that it could not be so determined because the beneficiary might die within the period of three days after the close of the taxable year and that, therefore, it could not be said that this income was to be distributed currently to the particular beneficiary whom the government sought to tax.

The identical situation is involved in the instant case. The issue is whether the income is taxable to the fiduciary or to the beneficiary (in this instance, the grantor). The government will receive a larger tax if the income is taxed to the beneficiary. Nevertheless, since it cannot be said on December 31st of any year that the income is held or accumulated for future distribution to the grantor, it necessarily follows that the income is held or accumulated in trust for the benefit of persons whose identity cannot be determined.

That the income in the instant case was accumulated for persons whose identity could not be determined is also clear from other decisions.

In *De Brabant* v. *Commissioner*, 90 F. (2d) 433 (C. C. A. 2nd, 1937), the court said that the words "unascertained persons" referred "to those whose identification depends on future contingencies".

So also in *Ferguson* v. *Forstmann*, 25 F. (2d) 47 (C. C. A. 3rd, 1928), *Hart* v. *Commissioner*, 54 F. (2d) 848 (C. C. A. 1st, 1932), and *Commissioner* v. *Owens*, 78 F. (2d) 768 (C. C. A. 10th, 1935), the court held that the words "unascertained persons" referred to a person who was not definitely known or determined. They were all cases in which the income was accumulated pending litigation between rival claimants. In the *Owens* case, the court said:

> "The New Century Dictionary defines unascertained as follows: 'Not certainly known or determined.' Webster's New International Dictionary defines ascertained as follows: 'To find out or learn for a certainty by trial, examination, or experiment.'
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> "We are of the opinion that 'unascertained persons,' as used in the statutes here involved, embraces one who occupies a particular status, such as owner, heir, *cestui que* trust, and the like, but who is not definitely known or determined."

In *Eustis* v. *Commissioner*, 30 B. T. A. 820 (1934), the taxpayer's right to the income depended upon his living until the June 15th of the year succeeding that in which the accumulation occurred. In that case, the Board said:

> "The petitioner's right to receive the income in controversy being dependent upon his being alive on some date in the future, and the continuance of life until any particular date in the future being one of the most uncertain things known to human experience, we think the petitioner's interest in the income was highly contingent and at most constituted only a possibility."

D. Since the income of the trusts was held or accumulated for future distribution to a person or to persons whose identity could not be determined until the happening of unpredictable events, it could not have been held or accumulated for future distribution to the grantor.

We submit that "a person or persons whose identity can not be determined until the happening of unpredictable events" is not the equivalent of "the grantor". The Circuit Court of Appeals, however, has held that the clause first quoted is the equivalent of the phrase last quoted.

A reading of Section 161(a)[21] and 167 in the light of familiar rules of statutory construction demonstrates that Congress did not intend the phrase "distribution to the grantor" to mean the equivalent of distribution to a person or to persons whose identity could not be determined until the happening of unpredictable events.

Section 161(a), so far as pertinent,[22] provides:

> The taxes imposed by this title upon individuals shall apply to the income of . . . any kind of property held in trust, including—
>
> (1) Income *accumulated in trust for the benefit of* unborn or unascertained persons or persons with contingent interests, and *income accumulated or held for future distribution* under the terms of the will or trust.

The verb "accumulated" is used twice, in each case with a different combination of words. First,—the combination is "accumulated in trust for the benefit of". Second,—the combination is "accumulated or held for future distribu-

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[21] 47 Statutes at Large, Public Volume I, p. 219; 48 Statutes at Large, Public Volume I, p. 727, U. S. C. (1934 ed.) p. 1058.

[22] The section is quoted in full in the Appendix to this brief, beginning at page 31.

tion". The first clause by its terms deals with the accumulation of income for the benefit of unborn and unascertained persons and persons with contingent interests,—for the benefit of persons whose identity can not be determined until the happening of unpredictable events. The second clause must of necessity relate to income accumulated or held for future distribution to persons other than unborn and unascertained persons, to persons other than persons with contingent interests;—it must relate to income accumulated or held for future distribution to persons whose identity can be determined at the time of the accumulation without regard to future events.

The counterpart of Section 167 first appeared in the Revenue Act of 1924. When the Revenue Act of 1924 was being considered by Congress the Revenue Act of 1921 was in effect. Section 219(a)(2) and (3)[23] of the Revenue Act of 1921 was identical with Section 161(a)(1) of the Revenue Acts of 1932 and 1934 which we are now considering. Congress, in enacting the Revenue Act of 1924, therefore knew that it was amending the language which we have analyzed above.

Section 219(h)[24] of the Revenue Act of 1924, provided so far as pertinent:[25]

> Where any part of the income of a trust may . . . be *held or accumulated for future distribution* to him (the grantor), . . . such part of the income of the trust shall be included in computing the net income of the grantor.

Thus Congress having before it a statute which specifically enumerated the classes of income accumulated in trust,

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[23] 42 Statutes at Large, Public Volume I, p. 246.

[24] 43 Statutes at Large, Public Volume I, p. 277.

[25] The section is quoted in full in the Appendix to this brief, beginning at page 31.

and wishing to amend that statute to provide that accumulated income to be paid to the grantor in the future should be taxed to the grantor, deliberately refused to adopt the language of the existing statute ("accumulated in trust for the benefit of") which related to income accumulated or held for future distribution to persons whose identity *could not be* determined until the happening of unpredictable events and elected to use, in the amendment, the language ("accumulated or held for future distribution") which related to income accumulated for the benefit of persons whose identity *could be* determined at the time of the accumulation.

One can readily follow the reasoning of the draftsman of Section 219(h) of the Revenue Act of 1924. He knew that the law then in existence laid down the general rule that the income of a trust was taxable to the trustee. He knew that his task was to provide an exception to that rule, namely that income accumulated for the benefit of the grantor should be taxable to the grantor. He turned to Section 219(a) (2) of the Revenue Act of 1921 where accumulated income of a trust is first mentioned. He read:

> "Income *accumulated in trust for the benefit of* unborn or unascertained persons or persons with contingent interests."

In Section 219(a) (3) he read:

> "*Income held for future distribution* under the terms of the will or trust."

For his purposes the language of either Section 219(a) (2) or Section 219(a) (3) was satisfactory. He could, in drafting Section 219(h), say:

> "Where any part of the income of a trust *may . . . be accumulated in trust for the benefit* of the grantor, such part of the income shall be included in computing the net income of the grantor."

or

> "Where any part of the income of a trust may . . . be *held for future distribution* to the grantor, such part of the income of the trust shall be included in computing the net income of the grantor."

He realized, however, that the language of Section 219(a) (2) related to income accumulated for future distribution to persons whose identity could not be determined until the happening of unpredictable events, whereas Section 219(a) (3) related to income accumulated for the benefit of persons whose identity could be determined at the time of the accumulations without regard to future events. He therefore *passed over* the language of Section 219(a) (2) and *adopted* the language of Section 219(a) (3) as follows:

> "Where any part of the income of a trust may . . . be held or accumulated for future distribution to him (the grantor) such part of the income of the trust shall be included in computing the net income of the grantor."

We submit that Section 167 was not intended to tax to the grantor the accumulated income of a trust when the accumulation was as here for the benefit of a person or persons whose identity could not be determined at the time of the accumulation.

If Congress had intended that accumulated income which *might* be paid to the grantor in the future should be taxed to the grantor, it would have been an easy task to so provide.

> ". . . where Congress has drawn a distinction, however nice, it is not proper for us to obliterate it." (*Helvering* v. *Wood*, 309 U. S. 344, 347.)

Petitioner's position is supported by a series of decisions of the United States Board of Tax Appeals, in only one of which has the government prosecuted an appeal on this point.

In *Baker* v. *Commissioner*, 43 B. T. A. 1029, decided March 19, 1941, two types of accumulations were possible under the terms of the trust,—(1) capital gains and (2) a part of the income was to be accumulated during the minority of the grantor's son. As to a part of the capital gains and as to the income accumulated during the minority of the son, the grantor was to receive distribution thereof if his son died without issue prior to arriving at the age of thirty-five years and if the grantor were alive at the time of his son's death. As to the balance of the capital gains, the grantor was to receive distribution thereof if his son died, during his mother's lifetime, without issue prior to arriving at the age of thirty-five years, or if said son died, after the death of his mother, prior to attaining the age of thirty-five years, and if the grantor were alive at the time of the death of the survivor of the son and the mother. A part of the accumulated income was therefore held and accumulated for future distribution to the grantor, *if* he survived his son, and *if* his son did not live to be thirty-five years of age, and *if* the son left no issue. The balance of the accumulated income was held and accumulated for future distribution to the grantor, *if* he survived both his wife and his son, *if* his son did not live to be thirty-five years of age and *if* the son left no issue. The Board held that the income was not held or accumulated for future distribution to the grantor within the meaning of Section 167. The *Baker* case is identical in principle with the instant case. The accumulated income in the instant case was held or accumulated for distribution to the petitioner *if* it was not diminished by expenses, *if* the petitioner lived until the June 30th and December 31st of the second year following the accumulation, *if* during the year following the year of accumulation designated amounts were paid to the living children of petitioner from the current income of the trusts, or if any of said children were not living

during the year subsequent to the year of accumulation *if* $10,000. of current income was paid to or for the benefit of each surviving child of such deceased child.

To the same effect are *Boeing* v. *Commissioner*, 37 B. T. A. 178; *Pycatt* v. *Commissioner*, 39 B. T. A. 774; *Moore* v. *Commissioner*, 39 B. T. A. 808; *Estate of Edward Johnson* v. *Commissioner*, unreported memorandum decision of the United States Board of Tax Appeals entered May 29, 1939; *Ward* v. *Commissioner*, 40 B. T. A. 225; *McLean* v. *Commissioner*, 41 B. T. A. 565; and *Wilson* v. *Commissioner*, 42 B. T. A. 1260.

The government appealed the *Boeing*[25a] case but abandoned its appeal on this issue. It appealed the *Ward*[26] case, but failed to appeal on the issue involved in this case. The taxpayer appealed the *McLean*[27] case on other issues and the government did not cross-appeal. None of the other cases, except the *Wilson* case, was appealed. The appeal in the *Wilson* case has not been decided.

Conclusion.

It is, therefore, respectfully submitted that the Petition for Writ of Certiorari should be granted as prayed for.

Respectfully submitted,

ROBERT H. MONTGOMERY,
JAMES O. WYNN,
THOMAS G. HAIGHT,
LEIGHTON P. STRADLEY,
MAURICE T. MOORE,
J. MARVIN HAYNES,
CHESTER J. MCGUIRE,
GEORGE G. TYLER,
Counsel for Petitioner.

[25a] 106 F. (2d) 305.
[26] 119 F. (2d) 207.
[27] 120 F. (2d) ....., June 20, 1941.